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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

RESOL GROUP LLC, Plaintiff and Respondent, v. SIDNEY T. SCARLETT, Defendant and Appellant.	H045121, H045828 (Santa Clara County Super. Ct. No. 1-14-CV-267656)

Appellant Sidney T. Scarlett, representing himself, has filed two appeals arising out of a quiet title action filed against him by respondent Resol Group LLC (Resol). For the reasons explained below, we affirm the orders and judgment.

I. FACTS AND PROCEDURAL BACKGROUND

In May 2014, Resol purchased a foreclosed property in San Jose (the property). Scarlett was the former owner and resident of the property. Resol later discovered various documents Resol believed were fraudulent that had been recorded against the property's title. In July 2014, Resol filed a quiet title action in Santa Clara County Superior Court against Scarlett and several other defendants (the quiet title action). Resol also asserted claims for slander of title and conspiracy to slander title. Scarlett was personally served with the complaint on July 11, 2014.

Between 2013 and 2015, Scarlett initiated multiple bankruptcy proceedings in federal bankruptcy court and unsuccessfully attempted several times to remove the quiet title action to federal court. In 2013, Scarlett filed for Chapter 13 bankruptcy.[1] On April 14, 2014, prior to the foreclosure sale of the property, the bankruptcy court terminated the automatic stay of proceedings that had been triggered by Scarlett's filing of bankruptcy. (See generally 11 U.S.C. § 362.) The bankruptcy court barred Scarlett from refiling for bankruptcy protection until April 2015.

On August 12, 2014, Scarlett filed a notice of stay of proceedings in the quiet title action, although none of the boxes are checked in the portion of the form that sets out the justification for the stay. That same day, Resol filed a request for entry of default against Scarlett, which the trial court clerk entered. In September 2014, Scarlett filed a demurrer to the complaint in the quiet title action. Handwritten notes on the face of the demurrer and below the filing stamp indicate that the demurrer was "[s]triken per order of 10/9/14."

In October 2014, Scarlett filed a request for relief from the default entered by the trial court in the quiet title action. Scarlett appears to have submitted a motion to "Set Aside the Clerk's Default of August 12, 2014, or alternatively, to Strike/Void the Void Order" (motion to set aside the default) and other documents requesting relief from the default, arguing primarily that the trial court could not enter default against him because he had filed for bankruptcy protection in July 2014.[2]

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[1] We take the procedural history of Scarlett's bankruptcy proceedings largely from the trial court's May 18, 2015 order in the quiet title action, which does not appear in the clerk's transcript but was attached to the civil case information statement Scarlett filed in this court in appeal H045121. On our own motion, we order the record augmented with a copy of this order. (See Cal. Rules of Court, rule 8.155(a)(1)(A).)

[2] The papers submitted by Scarlett related to his request from relief from the default are not included in the record before us. We take our summary of them from the trial court's May 2015 default order.

On May 18, 2015, the trial court issued a written order denying Scarlett's motion to set aside the default (the May 2015 default order).[3] The trial court found that Scarlett failed to set forth facts establishing that the default was "entered on the basis of mistake, inadvertence, surprise or excusable neglect. [Code of Civil Procedure] Section 473 [, subdivision] (b).[4]" The trial court also rejected Scarlett's contention that it could not enter a default against him because he had filed for bankruptcy protection. Relying on judicially-noticed federal bankruptcy court orders, the trial court found that Scarlett was "barred from filing for bankruptcy protection until April, 2015."[5] The trial court further found that Scarlett "obviously knew he could not be protected by the Bankruptcy Court because [another judge] allowed the unlawful detainer action to proceed in light of the Bankruptcy Court's April 14, 2014 order." The trial court observed that "Scarlett made a tactical and strategic decision not to file an answer to the subject complaint, but rather engaged in maneuvers to delay adjudication of the issues presented in the complaint." The trial court concluded that "[s]uch conduct will not be allowed by this Court or serve as a basis to set aside the default."

In the May 2015 default order, the trial court rejected Scarlett's argument that the entry of the default violated his due process rights. The trial court found that Scarlett was personally served with the complaint in the quiet title action, and the trial court had properly entered the default against Scarlett in August 2014.

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[3] Neither of the clerk's transcripts for Scarlett's appeals contains a copy of the May 2015 default order. On our own motion, we order the record augmented with a copy of this order, which was attached to the civil case information statement Scarlett filed in this court in the H045121 appeal. (See Cal. Rules of Court, rule 8.155(a)(1)(A).)

[4] Further unspecified statutory references are to the Code of Civil Procedure.

[5] Other than a single page of what appears to be a part of a bankruptcy petition filed by Scarlett, Scarlett's filings in federal bankruptcy court do not appear in the record on appeal.

Scarlett moved for reconsideration of the trial court's May 2015 default order. The trial court considered Scarlett's motion at a hearing held in July 2015. Although the record on appeal does not contain a transcript of the July 2015 hearing, the trial court's subsequent order denying Scarlett's motion for reconsideration (the September 2015 reconsideration order) notes that Scarlett "specially appeared through legal counsel" at the hearing and requested a continuance "based on an alleged health condition."[6] The trial court denied the request for a continuance "after noting the lack of documentation for [Scarlett's] alleged health condition and the fact that the matter had already been continued by [Scarlett] based on an alleged health condition of [Scarlett's] mother the week prior." At the July 2015 hearing, the trial court denied Scarlett's motion for reconsideration, although it did not issue its written order until September 2015.

Four days after the July 2015 hearing on Scarlett's motion for reconsideration, on July 13, 2015, the parties appeared at a hearing in which Resol sought to "prove-up" the default so that it could secure a judgment in the quiet title action. The July 13 hearing was heard by a different judge than the judge who had presided over the earlier court appearances. Shortly after the July 13 hearing commenced, Scarlett informed the trial court that the case "has been removed to Federal Court and this Court has no jurisdiction." Scarlett further added, "And besides the bankruptcy stay that I had when the default judgment was taken, this Court acted without jurisdiction" because "I cannot see anywhere in the file where there is a certified letter of remand from the Federal Court." During the hearing, the trial court looked for a remand order from the federal district court in the court's file, and it was unable to locate one.

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[6] On our own motion, we order the record augmented with a copy of the September 2015 reconsideration order, which was attached to the civil case information statement Scarlett filed in this court in case No. H045121. (See Cal. Rules of Court, rule 8.155(a)(1)(A).)

Scarlett also indicated to the trial court that he had filed a notice of removal that day in the clerk's office related to a "new case." In light of that representation by Scarlett, and because it could not locate a remand order related to the prior federal action, the trial court stated that it was not prepared to proceed any further on Resol's motion. The trial court set a status review hearing before the judge that had issued the prior orders to determine if the trial court had "jurisdiction to move forward."

On September 21, 2015, the original judge in the case issued a written order denying Scarlett's motion for reconsideration (the September 2015 reconsideration order). In the September 2015 reconsideration order, the trial court found it had jurisdiction over the quiet title action, noting that Scarlett had filed a notice of removal on January 20, 2015, and the trial court had continued the "instant motion to May 12, 2015 to determine the status of his federal action." It further found that the federal court "dismissed [Scarlett's] federal action by order dated March 5, 2015" and that "[a]t that point, this court resumed jurisdiction of the case." The trial court also stated that Scarlett did not dispute he was personally served with the summons and complaint in the quiet title action and found not credible Scarlett's assertion that he had never examined the summons or complaint. The trial court concluded that Scarlett had not established " 'surprise' or 'excusable neglect' justifying [Code of Civil Procedure section] 473 relief." The trial court denied Scarlett's motion for reconsideration.

On November 6 and 13, 2015, the trial court denied proposed orders submitted by Scarlett (the November 6 and 13, 2015 orders).[7] In the November 6 order, the trial court denied Scarlett's request to strike the "Default Judgement, quash service of summons,

[7] On our own motion, we order the record augmented with a copy of the November 6 and 13, 2015 orders, which were attached to the civil case information statement Scarlett filed in this court in the H045121 appeal. (See Cal. Rules of Court, rule 8.155(a)(1)(A).) The record on appeal does not contain transcripts of any hearings held in connection with these orders.

and Void orders of the court from November 4, 2014 through September 16, 2015." On November 13, 2015, Scarlett filed a document titled "Ex Parte Application for Declaratory Relief" along with a proposed order, a memorandum of points and authorities, and "judicially noticed evidence," which the trial court denied that day. The footer of Scarlett's November 13 filing labels the document a "Cross Complaint." Scarlett's filing referenced a pending criminal matter against Scarlett that he contended justified ex parte relief, and that he was entitled to declaratory relief in the form of declaring the deed of trust to be fraudulent.

The appellate record contains an order issued on November 17, 2015, by the federal court to which Scarlett had attempted to remove the quiet title action. The federal court order references previous orders it had issued on December 1, 2014, February 11, 2015, and August 31, 2015. The order states "There is no federal question on the face of Resol Group's complaint. . . . This Court remanded Scarlett's three prior attempts to remove the state court action for lack of federal question or diversity jurisdiction and must do so once again." The federal court found Scarlett's notice of removal to federal court was "frivolous." The federal court also issued a separate order ordering Scarlett to show cause why sanctions should not be imposed based on its prior order putting Scarlett on notice that any further attempts to remove the quiet title case to federal court could result in sanctions. The record on appeal does not indicate whether the federal court imposed sanctions on Scarlett.

In February 2016, Scarlett filed a notice of appeal in the quiet title action that stated he was both appealing from a default judgment as well as filing an "[i]nterlocutory" appeal. This court assigned case No. H045121 to this appeal. The front page of the civil case information statement that Scarlett filed in H045121 asserts that the appeal relates to the May 2015 default order and a default judgment.[8] Scarlett attached as

[8] While Scarlett's February 2016 notice of appeal in H045121 referenced a default judgment, there was no such judgment at that time in the quiet title action.

"exhibits" to the civil case information statement the trial court's May 2015 default order, the trial court's September 2015 reconsideration order, and Scarlett's proposed November 6 and 13, 2015 orders, which the trial court had denied.

While Scarlett's appeal in H045121 was pending, in September 2016 Resol moved for judgment in the quiet title action against Scarlett based on the default previously entered in August 2014.[9] On October 3, 2016, Resol appeared for a hearing on its motion for a judgment. Scarlett did not appear at the hearing, although the trial court's clerk stated that she saw Scarlett outside of the courtroom before the hearing began: "[h]e was outside about 1:15 when we opened up." The trial court asked the clerk if Scarlett had requested any additional time or "anything." The clerk responded that "[h]e didn't even walk in." The trial court then stated "All right. Well, it's 1:40. The hearing is set for 1:30. There's no appearance. And so—I don't know that he would have any standing to say anything anyway. So, are you [Resol] ready to proceed?"

At the October 2016 hearing, Resol introduced its evidence supporting its motion for judgment in the quiet title action. Resol's attorney asserted to the trial court that the "latest bankruptcy case" was dismissed, and the "[c]ourt record shows a two-year bar on further bankruptcies." Although he was apparently in the courthouse, Scarlett did not appear at the October 2016 hearing. The trial court entered judgment in favor of Resol. The trial court's judgment found that a default had been entered against Scarlett, and Resol had sole title to the property in San Jose. It also found Scarlett liable for slander of title and conspiracy to slander title and awarded Resol nominal damages in the amount of $1.

Scarlett appealed this judgment in the quiet title action, in an appeal to which this court assigned case No. H045828. On its own motion, this court ordered both of

[9] Resol also moved for default judgment against the other defendants in the quiet title action, but they have not appeared in these appeals. We therefore do not further discuss the proceedings against them.

Scarlett's appeals from the quiet title action considered together for argument and disposition.

II. DISCUSSION

Scarlett appeals primarily on the ground that the trial court lacked "jurisdiction" when making its orders and judgment. He contends that the trial court lacked jurisdiction to issue its orders and judgment because of his bankruptcy filing in July 2014 in federal bankruptcy court. Scarlett also argues the trial court lacked jurisdiction based on his efforts to remove the quiet title action to federal district court. Due to these jurisdictional defects and other claimed errors, Scarlett contends the 2016 judgment was "void." For the reasons we will explain, we disagree and affirm the orders and judgment.

We have jurisdiction to consider Scarlett's appeal of the judgment and orders related to the entry of default that preceded the judgment. (§ 904.1, subd. (a)(1); *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981 (*Rappleyea*).) Resol has not filed responsive briefing or otherwise participated in these appeals. Because there is no respondent's brief in either appeal, we "decide the appeal on the record, the opening brief, and any oral argument by the appellant." (Cal. Rules of Court, rule 8.220(a)(2).)

A. Appeal of the May 2015 Default Order (H045121)

We begin with Scarlett's first appeal (H045121). Although the notice of appeal does not specify the order from which Scarlett appeals, the front page of the civil case information statement states that the appeal in H045121 relates to the May 2015 default order. As described above, in the May 2015 default order, the trial court denied Scarlett's motion to set aside the clerk's default of August 2014. Scarlett attacks the trial court's ruling on numerous grounds, including that the trial court lacked jurisdiction due to his removal of the quiet title action to federal court and his separate bankruptcy filing in July 2014.

As a general rule, "[a] judgment or order of the lower court is presumed correct [with] [a]ll intendments and presumptions . . . indulged to support it on matters as to

which the record is silent." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, italics omitted.) To obtain reversal, the appellant must affirmatively demonstrate error on the record before the court. (*Ibid*.) "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) This court must hold a self-represented litigant to the same procedural rules as an attorney. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 (*Nwosu*).) On appeal "the party asserting trial court error may not . . . rest on the bare assertion of error but must present argument and legal authority on each point raised." (*Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 649.) Even though he is self-represented, Scarlett must present an adequate record demonstrating purported error by the trial court. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Nwosu*, at p. 1247.)

Scarlett has failed to comply with these fundamental principles of appellate review. He does not provide record cites, discernible argument, or supporting legal authority to demonstrate his claims that the trial court erred in its May 2015 default order. While we have discretion to deem such arguments waived (*T.P. v. T.W.* (2011) 191 Cal.App.4th 1428, 1440, fn. 12), in the interests of justice we will consider Scarlett's arguments on the merits to the extent we can discern them. (*Dexter v. Pierson* (1931) 214 Cal. 247, 250.)

It appears that Scarlett raises two issues relating to the May 2015 default order. He argues that the trial court abused its discretion in denying his motion to set aside the default on the basis of mistake, inadvertence, surprise, or excusable neglect as set forth in section 473, subdivision (b). Scarlett also contends the trial court lacked jurisdiction to issue the May 2015 default order. As to jurisdiction, Scarlett raises two independent arguments: (i) that Scarlett had removed the quiet title action to federal court and the trial court had not resumed jurisdiction; and (ii) Scarlett had filed for bankruptcy in federal

bankruptcy court triggering an automatic stay under title 11 United States Code section 362, subdivision (a) (hereafter 11 U.S.C. section 362(a)).

Turning first to his jurisdictional arguments, Scarlett principally contends that the clerk's entry of default in July 2014 violated the automatic bankruptcy stay afforded by 11 U.S.C. section 362(a).[10] We review de novo whether the entry of default violated this statute's automatic stay provision. (See *Shaoxing County Hauyue Import & Export v. Bhaumik* (2011) 191 Cal.App.4th 1189, 1196.)

Scarlett argues that the trial court's entry of default violated the bankruptcy stay because Scarlett filed for bankruptcy 12 days before the clerk entered a default against him. However, Scarlett fails to mention other facts found by the trial court—principally that, in April 2014, the federal bankruptcy court "barred" Scarlett "from filing for bankruptcy protection until April, 2015," and Scarlett knew about this order. Scarlett does not explain the consequence of this bar or provide legal authority supporting his position that, in spite of it, the clerk's entry of default in August 2014 violated 11 U.S.C.

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[10] 11 U.S.C. section 362(a), states that "[A] petition filed under . . . this title . . . operates as a stay, applicable to all entities, of – [¶] (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; [¶] (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title; [¶] (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; [¶] (4) any act to create, perfect, or enforce any lien against property of the estate; [¶] (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title; [¶] (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title; [and] [¶] (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor . . . ."

section 362(a). Under these circumstances, we are not persuaded that the trial court lacked jurisdiction.

Scarlett also argues the trial court lacked jurisdiction because he had removed the quiet title action to federal court, and the trial court thereafter made rulings "without a Remittitur from the U.S. District Court as required to resume jurisdiction." Connected with this removal issue, Scarlett further alleges that the trial court "ignore[d] its own Appellant [*sic*] Divisions Order of Stay of proceedings due to removal to federal court" and cites to title 28 United States Code section 1446, subdivision (d).[11]

The record on appeal contains no order by the appellate division of the trial court, and we therefore cannot review it. Even assuming such an order exists, we are not obligated to "independently acquire" the records of the trial court. (See *In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498–499.) Scarlett also fails to address the trial court's finding that the federal court dismissed Scarlett's federal action by order dated March 5, 2015 and that "[a]t that point, this court resumed jurisdiction of the case." The federal court's order in November 2015 makes clear that all four of Scarlett's removal attempts were "remanded" to state court rather than dismissed, giving the state court jurisdiction to proceed with the quiet title action. (*Allstate Insurance Co. v. Superior Court* (1982) 132 Cal.App.3d 670, 675–676.) Scarlett has not persuaded us that the trial court lacked jurisdiction over the quiet title action.

We also reject Scarlett's assertion that the trial court abused its discretion in refusing to set aside the default. Section 473, subdivision (b) states in pertinent part that "the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit

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[11] Title 28 United States Code section 1446, subdivision (d), states, "Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment . . . unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect." (§ 473, subd. (b).) As the California Supreme Court has made clear, "self-representation is not a ground for exceptionally lenient treatment" (*Rappleyea, supra,* 8 Cal.4th at p. 984), and "the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation." (*Id*. at pp. 984–985.) "Where an appeal involves factual determinations that affect entitlement to mandatory relief, such as whether attorney fault caused the default, we examine the record for substantial evidence in support of the trial court's exercise of discretion." (*Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1418.)

Scarlett does not dispute he was served with the complaint in the quiet title action in July 2014 and did not file a timely answer or other response. Scarlett filed his demurrer only in late September 2014, after the default was already taken. Scarlett also does not challenge or address on appeal his failure to file a "factually specific" declaration that articulated grounds for setting aside the default based on mistake, inadvertence, surprise or excusable neglect. The limited record before us confirms the trial court's observation that Scarlett "made a tactical and strategic decision not to file an answer to the subject complaint, but rather engaged in maneuvers to delay adjudication of the issues presented in the complaint." Accordingly, Scarlett has failed to meet his burden of showing the trial court abused its discretion in refusing to set aside the default.

We briefly address Scarlett's other arguments in appeal H045121. Scarlett contends that the trial court erred because it "ruled on her own recusal and disqualification." However, no such ruling appears in the record, and we therefore are unable to review it. Scarlett further argues that the trial court "abused its discretion and proceeded with the case without addressing Appellant's Demurrer." However, Scarlett fails to explain the relevance of the demurrer on the issue of whether the default should

have been set aside. Scarlett also claims that his "due process" rights were violated, and that also he "later suffered a severe heart attack and emergency surgery." Scarlett provides no citations to the record supporting this factual assertion, and he has therefore waived any claim on appeal that the trial court committed error with respect to his purported health condition. (See *Nwosu, supra*, 122 Cal.App.4th at pp. 1246–1247.)

By failing to present argument and authority, Scarlett has similarly waived his due process challenge. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) Moreover, the record is clear that he appeared for the hearing prior to the trial court's issuance of the May 2015 default order and submitted documents prior to that hearing that the trial court considered.

Finally, although Scarlett attached other orders to his civil case information statement besides the May 2015 default order—that is, the September 2015 reconsideration order and the August 5 and 13, 2015 orders—Scarlett does not address these orders in his briefing and thus has waived any challenges to them. Accordingly, we affirm the trial court orders that Scarlett challenges in appeal H045121.

B. Appeal of the Judgment (H045828)

In appeal H045828, which challenges the October 2016 judgment, Scarlett raises nearly identical contentions to those he made in appeal H045121. Scarlett appears to contend that the trial court could not render judgment in October 2016 because it had not yet received a remand from the federal district court after he had removed the case to federal court. This argument has no merit. Even on the limited record before us, it is clear that prior to issuance of the judgment in October 2016 the federal court had denied Scarlett's fourth removal request and remanded the case to state court. The record includes a certified copy of the remand order and docket from that federal action. Accordingly, Scarlett has not demonstrated any error by the trial court related to the remand from federal court.

Scarlett also reiterates his claim made in his challenge to the May 2015 default order that, based on his filing for bankruptcy in July 2014, an automatic bankruptcy stay was in effect at the time the clerk entered a default against him in the quiet title action. For the reasons we have explained above, Scarlett has not demonstrated error or challenged the trial court's finding that he was barred from filing a bankruptcy action at the time that default was entered.

Scarlett argues that "the trial court failed to follow operation of law [*sic*] exhibited by the trial courts [*sic*] own register of the record," the trial court erred regarding his cross-complaint filed in the "trial court, removed to U.S. District court, [and] filed again in U.S. District Court," "the trial court abused its discretion" by proceeding "with the case during Appellant's noticed medical unavailability," and it abused its discretion by proceeding "to trial without notice of trail [*sic*] date to Appellant, and no notice in the record to any other named defendants either, caused by Plaintiff's attorney defying the case management Judges Order to notice Appellant." Because these arguments are not accompanied by any record cites, discernible argument, or supporting legal authority, we deem them waived. (See *Nwosu*, *supra*, 122 Cal.App.4th at pp. 1246-1247.)

Furthermore, Scarlett has not provided argument explaining how any error resulted in any prejudice supporting reversal of the October 2016 judgment taken against him. "[A] judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown." (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187, citing *Denham v. Superior Court, supra*, 2 Cal.3d at p. 564.)

Because this was primarily a quiet title action, Scarlett had the right to appear and present evidence at the hearing in 2016 to contest the quiet title claims, whether or not he was in default.[12] (§ 764.010; *Harbour Vista, LLC v. HSBC Mortgage Services Inc.*

[12] As Scarlett elected not to appear at the October 2016 hearing (despite apparently being present in the courthouse), Scarlett was not prejudiced by any error the trial court

(2011) 201 Cal.App.4th 1496, 1508.) "Although section 764.010 places no constraints on a trial court's authority to enter a defendant's default in a quiet title action, it does preclude the entry of a *judgment* by default." (*Nickell v. Matlock* (2012) 206 Cal.App.4th 934, 944.) A plaintiff "must prove its case in an evidentiary hearing with live witnesses and any other admissible evidence," (*id*. at p. 947) and "overcome the admissible evidence offered by a defaulting defendant." (*Ibid*.)

The trial court conducted an evidentiary hearing in Resol's quiet title action, and Scarlett does not appear to challenge on appeal the sufficiency of the evidence heard by the trial court. While Scarlett attacks the clerk's entry of default made in 2014, he does not argue or provide a record that he remained in bankruptcy in late 2016 when the hearing and judgment occurred, or that the bankruptcy court otherwise retained jurisdiction during that time period. Thus, the state court had jurisdiction over the matter. (See *Tarakjian v. Krone* (1987) 196 Cal.App.3d 1243, 1246.)

Although Scarlett chose not to attend the 2016 hearing that resulted in the judgment, he does not argue lack of notice of the hearing due to the default entered against him in 2014. There is ample evidence in the record that Scarlett had notice of the proceedings in the quiet title action. As discussed above, even after the default was entered, Scarlett appeared at numerous hearings in the quiet title action and continued to participate in the action by filing motions and proposed orders.

Scarlett contends generally that the trial court improperly proceeded "during Appellant's noticed medical unavailability," and proceeded "to trial without notice of trail [*sic*] date." However, we cannot consider such claimed assertions of fact that are not supported by "citations to pages in the appellate record, or not appropriately supported by citations." (*Mueller v. County of Los Angeles* (2009) 176 Cal.App.4th 809, 816, fn. 5.) We note that the record before us further reflects that on the day of the 2016 hearing the

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may have made in its statement that Scarlett would not have had standing to say anything at the hearing had he appeared.

trial court's clerk observed Scarlett in the vicinity of the courtroom. Scarlett provides no explanation for his failure to attend the hearing or any factual support for his assertions that his medical conditions prevented his participation in the quiet title proceedings.

Scarlett does not argue prejudice as to the separate claims of slander of title and conspiracy to slander title included in the judgment, and he has therefore waived any claim of error as to them. We recognize that "[i]t is the policy of the law to favor, wherever possible, a hearing on the merits, and appellate courts are much more disposed to affirm an order where the result is to compel a trial upon the merits than they are when the judgment by default is allowed to stand and it appears that a substantial defense could be made." (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854.) However, no evidence of such a substantial defense asserted by Scarlett appears in the record before us.

For these reasons, Scarlett has failed to demonstrate any error resulting in a miscarriage of justice that warrants reversal of the judgment against him in the quiet title action. (See *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 801; see also *Rodriguez v. Henard* (2009) 174 Cal.App.4th 529, 536.)

III. DISPOSITION

The judgment and orders are affirmed.

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DANNER, J.

WE CONCUR:

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GREENWOOD, P.J.

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BAMATTRE-MANOUKIAN, J.

Resol Group, LLC v. Scarlett
H045121, H045828